

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HITACHI MAXELL, LTD.

Plaintiff,

v.

EVEREADY BATTERY COMPANY, INC.

Defendant.

1:03CV2614
03-801

C.A. No. _____

JURY TRIAL REQUESTED

JUDGE ALDRICH

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Hitachi Maxell, Ltd. files this Complaint for Patent Infringement against
Eveready Battery Company, Inc., alleging as follows:

PARTIES

1. Plaintiff Hitachi Maxell, Ltd. is a corporation incorporated under the laws of Japan with its registered head office at 1-1-88, Ushitora, Ibaraki-shi, Osaka, Japan 567-8567.
2. Defendant Eveready Battery Company, Inc. is a Delaware corporation having offices at 533 Maryville University Drive, St. Louis, Missouri 63141.
3. Defendant is transacting business in this judicial district by selling, and/or offering to sell coiled lithium batteries ("Eveready lithium batteries"), which practice the subject matter claimed in the patent asserted in this action, in this District, or by transacting other business in this District.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271 *et seq.*

5. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue in this District is proper under 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

7. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant is a Delaware corporation. In addition, personal jurisdiction is proper under 10 Del. C. § 3104(c)(1) and (3), based on Defendant having transacted business in Delaware by selling, and/or offering to sell the Eveready lithium batteries, thereby committing the tort of patent infringement.

OPERATIVE FACTS

8. On May 21, 1991, the United States Patent & Trademark Office duly and properly issued United States Patent No. 5,017,442 ("the '442 patent") to Osamu Watanabe *et al.*, entitled "Coiled Lithium Battery." Hitachi Maxell, Ltd. is listed as the owner by assignment of the '442 patent. A copy of the patent is attached as Exhibit 1.

9. On information and belief, Defendant makes, uses, sells, or offers to sell in the United States Eveready lithium batteries, such as the Energizer Lithium L91, which practice one or more claims of the '442 patent.

10. On information and belief, Defendant has infringed, and continues to infringe, the '442 patent by making, using, selling, or offering to sell within the United States Eveready lithium batteries, which practice the '442 patent.

COUNT ONE: INFRINGEMENT OF THE '442 PATENT

11. Defendant has infringed and continues to infringe at least claims 1-2 of the '442 patent, either by making, using, selling, and/or offering for sale the Eveready lithium batteries in violation of 35 U.S.C. § 271 *et seq.*

REQUEST FOR RELIEF

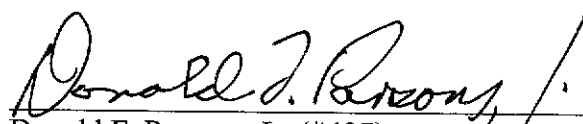
WHEREFORE, Plaintiff Hitachi Maxell, Ltd. respectfully requests the Court to grant it the following relief:

- (a) judgment against Defendant as to infringement of the '442 patent;
- (b) permanent injunctive relief precluding Defendant, its directors, officers, employees, agents, parents, subsidiaries, affiliates, and all persons in active concert or participation with them from further acts of infringement of the '442 patent;
- (c) judgment against Defendant for money damages sustained as a result of Defendant's infringement of the '442 patent;
- (d) that this be declared an exceptional case under 35 U.S.C. § 285, and that Plaintiff be awarded its costs and attorney fees; and,
- (e) such other and further relief as this Court finds just and proper.

JURY DEMAND

Plaintiff Hitachi Maxell, Ltd. requests trial by jury.

MORRIS, NICHOLS, ARSHT & TUNNELL

A handwritten signature in black ink, appearing to read "Donald F. Parsons, Jr.", written over a horizontal line.

Donald F. Parsons, Jr. (#437)
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August 11, 2003

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